EQUITY

Data (Use and Access) Bill: Briefing for the Public Bill Committee

February 2025

About Equity

Equity is the largest creative industries trade union with 50,000 members united in the fight for fair terms and conditions across the performing arts and entertainment. Our members are actors, singers, dancers, designers, directors, models, stage managers, stunt performers, circus performers, puppeteers, comedians, voice artists, supporting artists and variety performers. They work on stage, on TV and film sets, on the catwalk, in film studios, in recording studios, in night clubs and in circus tents.

Introduction

- Alongside copyright protections, the UK GDPR remains a critical legal basis for the protection of Equity members' works from exploitation by generative AI companies without transparency, consent or remuneration.
- The ICO is clear that, where performance data contains identifiable data of individual performers (such as their voice or likeness), it amounts to personal data and is subject to data protection law.
- Generative AI companies have a narrow legal basis upon which to undertake 'web crawling' in the development and application of AI models. According to the ICO, *"legitimate interests remain the sole available lawful basis for training generative AI models using web-scraped personal data based on current practices"* and even this will be interpreted narrowly.
- Where performance data is processed for the purposes of the development and application of foundational generative AI models, those companies must meet their obligations as data controllers and respect the full rights of data subjects, in this case performers, as set out in Articles 12-23, UK GDPR.
- We are concerned that this Bill may weaken GDPR protections, as part of the wider government preference for a more relaxed artificial intelligence regime. If that is the case, this poses a grave threat to the UK's world-leading creative industries, which represent 6% of UK GDP. It also pre-empts the government's own Copyright and AI consultation, which was inviting responses until 25th February 2025.
- The UK government must continue to provide the fullest possible protections to data subjects in the context of this emerging technology. UK GDPR must also be better enforced, considering the likelihood of industrial scale breaches of the rights of data

subjects during the training, development and application of generative AI models in the creative industries to date.

Part 5, Chapter 1: Data Protection

Clause 67: Meaning of research and statistical purposes

- This clause inserts into the substantive provisions of the UK GDPR a definition of scientific research currently only existing in the Recitals. The Information Commissioner's Office (ICO) already indicates that the development of artificial intelligence (AI) may fall within the definition of research.
- Equity is concerned that the amendment this clause makes to Article 4, UK GDPR, provides a wide a basis on which AI companies may exploit performers' data for their commercial gain when the research value is limited and a secondary purpose at best.
- As it stands, if processing can be described as "research-related", that processing is deemed compatible with the original purpose of the data processing – the purpose limitation principle, Art. 5, UK GDPR. In our view, AI companies would most likely rely upon the 'legitimate interests' lawful basis for processing performance data. Given that it is the ICO's view that satisfying the research provisions will likely satisfy also the 'legitimate interests' lawful basis,[1] the scope of this definition has a significant bearing upon the balance of interests in a legitimate interests assessment.
- Equity supports the amendments made to the Bill to qualify this definition with a 'public interest test', so that any research must be clearly in the public interest and weighed against competing interests, such as the data subject's rights.
- In any case, Equity believes it should be clarified that, even where processing falls within the research definition, this is only one factor in a legitimate interests assessment. In particular, where the research is primarily for commercial purposes, this should not weigh heavily against factors such as the level of intrusion on the data subject and whether less intrusive data collection is possible.

Clause 91: Duties of the Commissioner in carrying out functions

- Equity supports the principle of setting down in legislation the key objectives of the ICO under data protection legislation. However, Equity recommends that, in a new section 120A in the Data Protection Act 2018 (DPA), a third limb to this principal objective is added in relation to the investigation of historical breaches of data protection law.
- In the context of AI uses, Equity understands that AI companies have carried out text and data mining, for the purposes of training AI models, on content which contains performance data (amounting to personal data under the UK GDPR where it contains

[1] Information Commissioner's Office, '**Principles and grounds for processing**'

identifiable voice or likeness data). Without a lawful basis for this processing, this means widescale breaches of performers' data protection rights have already taken place.

- Further to this, Equity understands that content-owners are seeking to agree licensing deals with AI companies for the use of that content to train AI models. It is our position that, in many cases, content-owners have reached such agreements without identifying a lawful basis for this further processing of performers' personal data. Further detail on our position in relation to relevant lawful basis can be found in our letter, of 10 February 2025, to content-owners in the industry.
- Given these serious and potentially widespread breaches of data protection rights in the development of AI, Equity recommends that the investigation and remedying of historical breaches of data protection rights be clearly set down in legislation as part of the Commissioner's principal objective.

New section 120B, DPA 2018: Duties in relation to functions under the data protection legislation

- Equity is concerned that the introduction of additional requirements for the Information Commissioner to have regard for the desirability of promoting innovation and competition may lead to lax enforcement of data controllers' obligations under UK GDPR in the processing of data for generative AI foundational models.
- As this briefing has outlined, UK GDPR is an important basis for ensuring transparency around the data that generative AI companies use to train their models, and in requiring them to seek the consent of data subjects. It is a key element of protection for many working in the UK creative industries, though one currently not properly enforced.
- The government should, instead, focus on better enforcement of existing GDPR rules in relation to generative AI companies operating in the creative industries.
- As it stands, clause 120B is weighted heavily in favour of data controllers instead of data subjects, given the emphasis on the promotion of innovation and competition.

Part 7: Other provision about use of, or access to, data

Operation of web crawlers

- Equity supports new clauses 135 to 139 inserted into the Bill by amendments tabled by Baroness Kidron. These clauses make important improvements to transparency in the use of copyrighted works to train AI models. While transparency is a central principle of data protection law, it does not feature in the protection of intellectual property rights.

Clause 135: Compliance with UK copyright law by operators of web crawlers and general-purpose AI models

- This clause strengthens the scope of protections under the Copyright, Designs and Patents Act 1988 (CDPA) in the case where an AI developer based abroad uses data hosted in the UK to train an AI model. The concern is that foreign-based developers would be able to use data readily available online, breaching intellectual property rights with impunity and undermining domestic protections.
- Under this clause, regardless of where the copyright-relevant act – such as reproduction, which engages performers' rights under the CDPA – takes place, the AI developer must comply with the UK copyright regime if the model is commercialised in the UK.
- Given the highly mobile, digital and transnational nature of AI development, it is important that such measures are put in place so that any strengthening of intellectual property rights is not circumvented by AI companies moving copyright-relevant acts out of the UK.

Clauses 136 and 137: Transparency of crawler identity, purpose, and segmentation; Transparency of copyrighted works scraped

- As explained above, Equity understands that AI companies have already conducted significant text and data mining (TDM) of copyrighted works in which artists, including our members, have performers' rights under CDPA 1988 – most importantly, in our view, the right of reproduction under section 182A.
- We also understand that copyright-owners are agreeing licensing deals with AI companies for the use of content to train AI models without consideration for performers' rights in this content under the CDPA 1988.
- However, there is no mechanism in intellectual property law by which performers can find out whether content in which they have rights has been used for AI training purposes and, if so, the identity and owner of the relevant AI model or crawler. Either the AI developer has mined the content in breach of both copyright and performers' rights or the copyright-owner has reached a private commercial arrangement for licensing the content without consideration for the performer's property rights. Both generally take place without the performer's knowledge.
- As such, these clauses make an important move towards introducing greater transparency when copyrighted works have been used in AI training, so that performers may then be in a position to enforce their intellectual property rights.

Clause 138: Enforcement

- These clauses add important regulatory muscle to the powers of the newly-created Information Commission to enforce the above legal requirements. We support a proactive regulator on this issue, given the difficulties and costs generally associated with performers seeking redress through the courts.
  However, we note that the language throughout refers to "copyright owner" – notably at subclause (2) – rather than more broadly all those who have intellectual property rights. Performers often do not own the copyright in the content in which they feature

but, nonetheless, have important property rights conferred by the CDPA 1988. We would recommend broadening this language so that any person with property or non-property rights similarly can bring an action where these clauses are breached.

A new regime of image rights

- There is currently no unified regime of image rights (also known as personality rights) in the UK. These are property rights which a performer has in their likeness, voice, movement, 'brand' or other aspects of their personality. Equity believes this Bill is an opportunity to begin to introduce such a regime.
- At present, performers must piece together something approaching image rights from other legal regimes not specifically protecting aspects of personality. For example, performers' rights under the CPDA give them control in relation to certain types of exploitation of works in which they feature, for example where a performance is reproduced or distributed. Artists might also look to the common law tort of 'passing off' as a potential route to protect their image.
- However, none of these routes offer a general right through which an artist can control and commercialise their image. A dedicated image rights regime would enable performers to safeguard a meaningful income stream and defend their artistic integrity, career choices, brand, and reputation. More broadly for society, image rights are an important tool for protecting privacy and allowing an individual to object to the use of their image without consent.
- The rapid development of generative AI underlines the urgent need for an image rights regime: the amendments to the Bill tabled by Baroness Kidron demonstrate the current limitations of the copyright regime when it comes to giving content-owners and artists control over how their content and performances are used. While incremental reforms to performers' property rights (and related transparency requirements) may strengthen their position, the most robust option is to create a specific regime of image rights.
- Most EU jurisdictions and many US states have image rights regimes, with France and Germany having particularly strong protections. Through the Image Rights (Bailiwick of Guernsey) Ordinance 2012, Guernsey has created a statutory regime under which image rights can be registered, following which an artist can protect, license and assign aspects of their personality. Equity recommends that a similar regime is devised in the UK, inspired by the Guernsey model.

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